

AMENDED IN SENATE JULY 2, 2008
AMENDED IN ASSEMBLY APRIL 1, 2008
AMENDED IN ASSEMBLY MARCH 24, 2008
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1873

Introduced by Assembly Member Lieu

February 4, 2008

An act to amend Sections ~~116.540~~, 116.570, 116.610, and 116.820 of the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

AB 1873, as amended, Lieu. Small claims court.

~~(1) Existing law, the Small Claims Act, sets forth a comprehensive body of law governing small claims courts. Under existing law, although generally no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action, a party may appear and participate in a small claims action by a representative if the party qualifies under one of specified exceptions to that rule.~~

~~This bill would authorize the court in its discretion, upon a showing of good cause why a party or witness cannot appear in person at the small claims hearing, to allow any party or witness to appear by telephone, as specified. This bill would provide that the costs associated with appearing by telephone are not recoverable.~~

~~(2)~~

~~(1) Existing law authorizes any party to a small claims action to submit a written request to postpone a hearing date for good cause, as specified. Existing law requires the court to charge and collect a \$10 fee for the filing of a request for postponement and rescheduling of a~~

hearing date after timely service of both the claim and order directing the parties to appear has been made upon the defendant.

This bill would require that the request to postpone the hearing state whether any previous requests to postpone the hearing date were made by the requesting party and whether the court granted those requests. The bill would specify that the \$10 fee for the filing of a request for postponement after service of the claim and order shall be nonrefundable. The bill would require the court also to collect a nonrefundable \$10 fee for the filing of a request for postponement and rescheduling of a hearing date before service of the claim and order, or a counterclaim, if the court granted a prior postponement to the party making the request.

(3)

(2) Existing law provides for the enforcement of the judgment of a small claims court and requires the clerk to charge and collect specified fees for the issuance of a writ of execution, an abstract of judgment, or an order of examination of a judgment debtor.

This bill would instead require the clerk to charge and collect all fees associated with the enforcement of judgments, including, among other things, statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment, statutory fees for filing a notice of judgment lien on personal property, and statutory fees for issuing a writ for the enforcement of the judgment, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 116.540 of the Code of Civil Procedure~~
2 ~~is amended to read:~~
3 ~~116.540. (a) Except as permitted by this section, no individual~~
4 ~~other than the plaintiff and the defendant may take part in the~~
5 ~~conduct or defense of a small claims action.~~
6 ~~(b) Except as additionally provided in subdivision (i), a~~
7 ~~corporation may appear and participate in a small claims action~~
8 ~~only through a regular employee, or a duly appointed or elected~~
9 ~~officer or director, who is employed, appointed, or elected for~~
10 ~~purposes other than solely representing the corporation in small~~
11 ~~claims court.~~

1 ~~(e) A party who is not a corporation or a natural person may~~
2 ~~appear and participate in a small claims action only through a~~
3 ~~regular employee, or a duly appointed or elected officer or director,~~
4 ~~or in the case of a partnership, a partner, engaged for purposes~~
5 ~~other than solely representing the party in small claims court.~~

6 ~~(d) If a party is an individual doing business as a sole~~
7 ~~proprietorship, the party may appear and participate in a small~~
8 ~~claims action by a representative and without personally appearing~~
9 ~~if both of the following conditions are met:~~

10 ~~(1) The claim can be proved or disputed by evidence of an~~
11 ~~account that constitutes a business record as defined in Section~~
12 ~~1271 of the Evidence Code, and there is no other issue of fact in~~
13 ~~the case.~~

14 ~~(2) The representative is a regular employee of the party for~~
15 ~~purposes other than solely representing the party in small claims~~
16 ~~actions and is qualified to testify to the identity and mode of~~
17 ~~preparation of the business record.~~

18 ~~(e) A plaintiff is not required to personally appear, and may~~
19 ~~submit declarations to serve as evidence supporting his or her claim~~
20 ~~or allow another individual to appear and participate on his or her~~
21 ~~behalf, if (1) the plaintiff is serving on active duty in the United~~
22 ~~States Armed Forces outside this state, (2) the plaintiff was~~
23 ~~assigned to his or her duty station after his or her claim arose, (3)~~
24 ~~the assignment is for more than six months, (4) the representative~~
25 ~~is serving without compensation, and (5) the representative has~~
26 ~~appeared in small claims actions on behalf of others no more than~~
27 ~~four times during the calendar year. The defendant may file a claim~~
28 ~~in the same action in an amount not to exceed the jurisdictional~~
29 ~~limits stated in Sections 116.220, 116.221, and 116.231.~~

30 ~~(f) A party incarcerated in a county jail, a Department of~~
31 ~~Corrections and Rehabilitation facility, or a Division of Juvenile~~
32 ~~Facilities facility is not required to personally appear, and may~~
33 ~~submit declarations to serve as evidence supporting his or her~~
34 ~~claim, or may authorize another individual to appear and participate~~
35 ~~on his or her behalf if that individual is serving without~~
36 ~~compensation and has appeared in small claims actions on behalf~~
37 ~~of others no more than four times during the calendar year.~~

38 ~~(g) A defendant who is a nonresident owner of real property~~
39 ~~may defend against a claim relating to that property without~~
40 ~~personally appearing by (1) submitting written declarations to~~

1 ~~serve as evidence supporting his or her defense, (2) allowing~~
2 ~~another individual to appear and participate on his or her behalf if~~
3 ~~that individual is serving without compensation and has appeared~~
4 ~~in small claims actions on behalf of others no more than four times~~
5 ~~during the calendar year, or (3) taking the action described in both~~
6 ~~(1) and (2).~~

7 ~~(h) A party who is an owner of rental real property may appear~~
8 ~~and participate in a small claims action through a property agent~~
9 ~~under contract with the owner to manage the rental of that property;~~
10 ~~if (1) the owner has retained the property agent principally to~~
11 ~~manage the rental of that property and not principally to represent~~
12 ~~the owner in small claims court, and (2) the claim relates to the~~
13 ~~rental property.~~

14 ~~(i) A party that is an association created to manage a common~~
15 ~~interest development, as defined in Section 1351 of the Civil Code,~~
16 ~~may appear and participate in a small claims action through an~~
17 ~~agent, a management company representative, or bookkeeper who~~
18 ~~appears on behalf of that association.~~

19 ~~(j) At the hearing of a small claims action, the court shall require~~
20 ~~any individual who is appearing as a representative of a party under~~
21 ~~subdivisions (b) to (i), inclusive, to file a declaration stating (1)~~
22 ~~that the individual is authorized to appear for the party, and (2)~~
23 ~~the basis for that authorization. If the representative is appearing~~
24 ~~under subdivision (b), (c), (d), (h), or (i), the declaration also shall~~
25 ~~state that the individual is not employed solely to represent the~~
26 ~~party in small claims court. If the representative is appearing under~~
27 ~~subdivision (e), (f), or (g), the declaration also shall state that the~~
28 ~~representative is serving without compensation, and has appeared~~
29 ~~in small claims actions on behalf of others no more than four times~~
30 ~~during the calendar year.~~

31 ~~(k) A husband or wife who sues or who is sued with his or her~~
32 ~~spouse may appear and participate on behalf of his or her spouse~~
33 ~~if (1) the claim is a joint claim, (2) the represented spouse has~~
34 ~~given his or her consent, and (3) the court determines that the~~
35 ~~interests of justice would be served.~~

36 ~~(l) If the court determines that a party cannot properly present~~
37 ~~his or her claim or defense and needs assistance, the court may in~~
38 ~~its discretion allow another individual to assist that party.~~

1 ~~(m) Nothing in this section shall operate or be construed to~~
2 ~~authorize an attorney to participate in a small claims action except~~
3 ~~as expressly provided in Section 116.530.~~

4 ~~(n) (1) The court in its discretion, upon a showing of good cause~~
5 ~~why a party or witness cannot appear in person at the small claims~~
6 ~~hearing, may allow any party or witness to appear by telephone.~~

7 ~~(2) If a telephonic appearance is allowed, the court shall ensure~~
8 ~~all of the following:~~

9 ~~(A) The testifying party is sworn as a witness.~~

10 ~~(B) The identity of the testifying party has been established to~~
11 ~~the satisfaction of the court.~~

12 ~~(C) The testimony of the testifying party is audible to the~~
13 ~~opposing parties and any public observers of the trial. A party or~~
14 ~~witness appearing by telephone may, at or before the time of~~
15 ~~hearing, submit a declaration authenticating documentary evidence~~
16 ~~attached to the declaration. Costs associated with appearing by~~
17 ~~telephone are not recoverable under Section 116.610.~~

18 ~~(3) The court may, in its discretion, revoke its permission for~~
19 ~~the party or witness to appear by declaration or telephone.~~

20 ~~SEC. 2.~~

21 *SECTION 1.* Section 116.570 of the Code of Civil Procedure
22 is amended to read:

23 116.570. (a) Any party may submit a written request to
24 postpone a hearing date for good cause.

25 (1) The written request may be made either by letter or on a
26 form adopted or approved by the Judicial Council.

27 (2) The request shall state whether any previous requests to
28 postpone the hearing date were made by the requesting party and
29 whether the court granted those requests.

30 (3) The request shall be filed at least 10 days before the hearing
31 date, unless the court determines that the requesting party has good
32 cause to file the request at a later date.

33 (4) On the date of making the written request, the requesting
34 party shall mail or personally deliver a copy to each of the other
35 parties to the action.

36 (5) (A) If the court finds that the interests of justice would be
37 served by postponing the hearing, the court shall postpone the
38 hearing, and shall notify all parties by mail of the new hearing
39 date, time, and place.

1 (B) On one occasion, upon the written request of a defendant
2 guarantor, the court shall postpone the hearing for at least 30 days,
3 and the court shall take this action without a hearing. This
4 subparagraph does not limit the discretion of the court to grant
5 additional postponements under subparagraph (A).

6 (6) The court shall provide a prompt response by mail to any
7 person making a written request for postponement of a hearing
8 date under this subdivision.

9 (b) If service of the claim and order upon the defendant is not
10 completed within the number of days before the hearing date
11 required by subdivision (b) of Section 116.340, and the defendant
12 has not personally appeared and has not requested a postponement,
13 the court shall postpone the hearing for at least 15 days. If a
14 postponement is ordered under this subdivision, the clerk shall
15 promptly notify all parties by mail of the new hearing date, time,
16 and place.

17 (c) This section does not limit the inherent power of the court
18 to order postponements of hearings in appropriate circumstances.

19 (d) A nonrefundable fee of ten dollars (\$10) shall be charged
20 and collected for the filing of a request for postponement and
21 rescheduling of a hearing date after timely service pursuant to
22 subdivision (b) of Section 116.340 has been made upon the
23 defendant.

24 (e) A nonrefundable fee of ten dollars (\$10) shall be charged
25 and collected for the filing of a request for postponement and
26 rescheduling of a hearing date before service has been made
27 pursuant to subdivision (b) of Section 116.340 or subdivision (b)
28 of Section 116.360 if the court granted a prior postponement to
29 the party making the request.

30 ~~SEC. 3.~~

31 *SEC. 2.* Section 116.610 of the Code of Civil Procedure is
32 amended to read:

33 116.610. (a) The small claims court shall give judgment for
34 damages, or equitable relief, or both damages and equitable relief,
35 within the jurisdictional limits stated in Sections 116.220, 116.221,
36 and 116.231, and may make any orders as to time of payment or
37 otherwise as the court deems just and equitable for the resolution
38 of the dispute.

1 (b) The court may, at its discretion or on request of any party,
2 continue the matter to a later date in order to permit and encourage
3 the parties to attempt resolution by informal or alternative means.

4 (c) The judgment shall include a determination whether the
5 judgment resulted from a motor vehicle accident on a California
6 highway caused by the defendant's operation of a motor vehicle,
7 or by the operation by some other individual, of a motor vehicle
8 registered in the defendant's name.

9 (d) If the defendant has filed a claim against the plaintiff, or if
10 the judgment is against two or more defendants, the judgment, and
11 the statement of decision if one is rendered, shall specify the basis
12 for, and the character and amount of, the liability of each of the
13 parties, including, in the case of multiple judgment debtors, whether
14 the liability of each is joint or several.

15 (e) If specific property is referred to in the judgment, whether
16 it be personal or real, tangible or intangible, the property shall be
17 identified with sufficient detail to permit efficient implementation
18 or enforcement of the judgment.

19 (f) In an action against several defendants, the court may, in its
20 discretion, render judgment against one or more of them, leaving
21 the action to proceed against the others, whenever a several
22 judgment is proper.

23 (g) (1) The prevailing party is entitled to the costs of the action,
24 including the costs of serving the order for the appearance of the
25 defendant.

26 (2) Notwithstanding paragraph (1) of this subdivision and
27 subdivision (b) of Section 1032, the amount of the small claims
28 court fee paid by a party pursuant to subdivision (c) of Section
29 116.230 that exceeds the amount that would have been paid if the
30 party had paid the fee pursuant to subdivision (b) of Section
31 116.230 shall not be recoverable as costs.

32 (3) Notwithstanding paragraph (1) of this subdivision and
33 subdivision (b) of Section 1032, costs associated with appearing
34 by telephone shall not be recoverable.

35 (h) When the court renders judgment, the clerk shall promptly
36 deliver or mail notice of entry of the judgment to the parties, and
37 shall execute a certificate of personal delivery or mailing and place
38 it in the file.

39 (i) The notice of entry of judgment shall be on a form approved
40 or adopted by the Judicial Council.

1 ~~SEC. 4.~~

2 *SEC. 3.* Section 116.820 of the Code of Civil Procedure is
3 amended to read:

4 116.820. (a) The judgment of a small claims court may be
5 enforced as provided in Title 9 (commencing with Section 680.010)
6 of Part 2 and in Sections 674 and 1174 on the enforcement of
7 judgments of other courts. A judgment of the superior court after
8 a hearing on appeal, and after transfer to the small claims court
9 under subdivision (d) of Section 116.780, may be enforced like
10 other judgments of the small claims court, as provided in Title 9
11 (commencing with Section 680.010) of Part 2 and in Sections 674
12 and 1174 on the enforcement of judgments of other courts.

13 (b) The clerk of the court shall charge and collect all fees
14 associated with the enforcement of judgments under Title 9
15 (commencing with Section 680.010) of Part 2. The clerk shall
16 immediately deposit all the fees collected under this section into
17 a bank account established for this purpose by the Administrative
18 Office of the Courts. The money shall be remitted to the State
19 Treasury under rules adopted by, or trial court financial policies
20 and procedures authorized by, the Judicial Council under
21 subdivision (a) of Section 77206 of the Government Code. The
22 Controller shall distribute the fees to the Trial Court Trust Fund
23 as provided in Section 68085.1 of the Government Code.

24 (c) The prevailing party in any action subject to this chapter is
25 entitled to the costs of enforcing the judgment and accrued interest.